IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 414 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAI PRAHALDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 414 of 2002

MR RJ GOSWAMI for Petitioner No. 1

Mr.P.R.Abichandani. A.P.P. for Respondent.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/10/2002

ORAL JUDGEMENT

Rule. Mr. P.R.Abichandani waives service of rule on behalf of the respondent-State.

The revisioner is original accused no.1 before the Sessions Court, Ahmedabad Rural, in Sessions Case no.134/2002, and he is facing charges under Sections 3, 4, 5, 7, 8 and 9 of the Immoral Traffic (Prevention) Act,1956 (hereinafter referred to as "the Act"). Before the charge was framed by the Sessions Court, the revisioner tendered an application Exh.2 under Section 227 of the Code of Criminal Procedure praying for his discharge on various counts. The same application has been rejected by the learned Additional Sessions Judge and Fast Track Court, Court no.4 (probably Court no.3), Ahmedabad Rural, by order dated October 8,2002 which is challenged by this Revision Application.

2. The facts of the case, in brief, are that the present revisioner owns hotel " Hidway" situate on Gandhinagar Sarkhej Highway which was raided by police on 9th January, 2002, and as per the prosecution case four girls allegedly indulged in activity of prostitution were found from the hotel and the revisioner and his co-accused are alleged to have involved themselves in the offences for which they are charged.

3. Learned Advocate Mr. Raju appearing for the revisioner submitted that although the revisioner had prayed for a total discharge before the Sessions Court, and although the revisioner prays for his discharge in this Revision Application also for all the offences, he would restrict his contentions and prayer for discharge of the revisioner only for offences punishable under Section 9 of the Immoral Traffic (Prevention) Act and not other offences.

4. Learned Advocate Mr. Raju has annexed to the petition all the statements recorded by the police during the course of investigation, relied upon by the prosecution, to indicate the charges against the revisioner. Mr. Raju submitted that if these statements are read, the requirements of Section 9 of the Act are not fulfilled. No case can be said to have been made out even prima facie against the revisioner for offence punishable under Section 9 of the Act. Mr. Raju ,therefore, urged that revision may be considered as restricted to discharge of revisioner for offence punishable under Section 9 only, and may be allowed.

4.1 Mr. Raju submitted that earlier at the committal stage, similar prayer was made before the learned Magistrate, which was turned down by the Magistrate because it was only at the stage of committal. That

order was challenged before the Sessions Court by preferring Revision Application, which was turned down by the Sessions Court but in the light of the decision of the Apex Court, considering the scope of powers under Section 209 of the Criminal Procedure Code, the order was not further carried before a higher forum. Mr. Raju submitted that, therefore, application for discharge was preferred before the Sessions Court.

5. The Revision is opposed to by learned A.P.P. Mr. Abichandani.

6. Having regard to the contention raised by Mr. Raju, in order to appreciate the case of the revisioner, Section 9 of the Act may be referred to. Section 9 of the Act runs as under:

"9. Seducation of a person in custody.- Any person who having the custody, charge or care of, or a position of authority over, any person causes or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years."

7. Mr. Raju submitted that even if the whole of the prosecution case is taken as it is, it does not reveal, in any manner, that the four ladies who are allegedly caught from the hotel indulging themselves in prostitution were either in custody or charge or care of the revisioner; nor does it indicate that the revisioner was enjoying position of authority over those ladies. Mr. Raju submitted that case of seduction for prostitution against the revisioner is also not made out because the statements of the four ladies clearly indicate that they are in the profession for a long time; that they are coming from outside and are indulging in such activities with the help of other accused persons, but nowhere it is reflected that the revisioner had any position of authority over them or that they were in custody, charge or care of the revisioner.

8. Attention was drawn to the statements of Jyoti d/o. Rameshchandra Hariram Sindhi dated January 20,2002 wherein it is reflected that she is engaged in

prostitution through one Sanjay alias Devo and he takes her to hotel Hidway owned by the present revisioner. It is mentioned in the statement that revisioner invites customers and facilitates prostitution.

8.1 Statement of Seema alias Munnhi w/o Rahulbhai Patel alias Munnikhan s/o Salimbhai is recorded on January 10,2002. She says that she is also engaged in prostitution and that she stays with Mahmed Sabirhussain alias Raju and his wife Samabanu alias Kiran . She states that they take her to hotel Hidway owned by the revisioner and facilitates the prostitution activities by taking commission.

8.2 Statement of Soni alias Suchita w/o Pradeepbhai Devjibhai is recorded on January 10,2002. She says that she is a divorcee and is engaged in prostitution to earn her livelihood. She says that she is connected with Sanjay alias Devo Satyacharan Adhikari for the activity, and he takes her to hotel Hidway owned by the revisioner. It emerges from her statement that the revisioner charges more money from the customers and pays her less.

8.3 Statement of Sumisen d/o Gautamsingh Balisingh is recorded on January 10,2002. She says that she is also a divorcee and stays with her sister and earns out of prostitution. She is connected with Sanjay alias Devo Satyacharan Adhikari for that activity. He takes her to hotel Hidway owned by the revisioner and he invites customers from outside. It also emerges from her statement that the revisioner charges more money from the customers and pays her less.

8.4 Statement of Kailash alias Keva s/o Lalabhai Patel indicates that he is a driver; that he brings girls from Sanjay alias Devo's place to hotel Hidway and takes them back in the car.

9. It is evident from the above statements that the girls allegedly involved in prostitution did not stay in hotel Hidway owned by the revisioner. It is clear that they were taken to the hotel by the person through whom they were engaged, and therefore, it cannot be said that they were either under custody or charge or care of the revisioner who happens to be owner of the hotel. No other factors are indicated except that revisioner is the owner of the hotel and allegedly he used to charge more money from the customers and pay less to the girls, and therefore, there is nothing to indicate that he was enjoying a position of authority over the girls. Therefore, the aforesaid ingredients of Section 9 are not

made out ,at this stage, even accepting the prosecution case at its face value.

9.1 Section 9 also provides that person who aids or abets seduction for prostitution of that person shall also be punishable. Term "seduction" has been dealt with by the Apex Court in Ramesh vs. The State of Maharashtra, AIR 1962 SC 1908, wherein it was observed thus:

" Seducation implies surrender of her body by a woman who is otherwise reluctant or unwilling to submit herself to illicit intercourse in consequence of persuasion, flattery, blandishment or importunity, whether such surrender is for the first time or is preceded by similar surrender on earlier occasions. But where a woman offers herself for intercourse for money not casually but in the course of her profession as a prostitute - there are no scruples nor reluctance to be overcome, and surrender by her is not seduction within the Code. It would then be impossible to hold that a person who instigates another to assist a woman following the profession of a prostitute abets him to do an act with intent that she may or with knowledge that she will be seduced to illicit intercourse."

9.2 In the light of these observations, the contents of the statements of the girls, as discussed above, do not make out a case of seduction either against the revisioner.

9.3 In the opinion of this Court, therefore, the requirements of Section 9 of the Act are not fulfilled even after taking the prosecution case, as it is, against the revisioner. The revisioner, therefore, cannot be made to face a charge and trial for offence punishable under Section 9 of the Act.

The question as to the Court competent to try the case is not dealt with by this Court and it will be open for the revisioner to move the Sessions Court in this regard. If such a prayer is made, it will be decided by the Sessions Court in accordance with law.

Revision, therefore, deserves to be allowed to the aforesaid extent, and is allowed accordingly. Revisioner is discharged of offences punishable under Section 9 of the Immoral Traffic (Prevention) Act, 1956. It is hardly required to be stated that he shall face the trial for other offences. D.S.

(A.L.Dave,J.)

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